

24 September 1975

MEMORANDUM FOR:

25X1

SUBJECT : NSSM 229

Following are specific suggestions on DDI-desired revisions in Executive Order 11652 and the 17 May 1972 NSC Directive:

E.O. 11652

Section 4 (A)

Delete "on its face." The National Intelligence Daily, the Congressional Checklist, the Presidential Brief are not marked on the face. And neither the President nor members of the six committees have objected.

Section 5 (B) (2)

Modify to read as follows: Classified information or material specifically covered by statute, pertaining to cryptography or disclosing intelligence sources, methods, or processes for the collection of foreign information.

Section 5 (B) (3)

Replace with the following: Classified information or material disclosing a system, plan, installation or project the continuing protection of which is essential to the national security or that might reasonably be expected to damage foreign relations.

Section 5 (B) (4)

Needs definition. Most DDI classifiers define as jeopardy to a foreign person's life, career or property. Most DDI classifiers have no occasion to consider a definition applicable to U.S. nationals. Term "immediate" should be dropped. Foreign governments change too rapidly in both policy and personnel for juridical application of the "immediate" in the exemption.

SUBJECT: NSSM 229

Section 5 (C)

Insert after (C) a statement as follows: The provisions of the foregoing paragraphs relating to downgrading and declassification of classified information shall not apply to intelligence information concerning foreign individuals. Such information shall be protected by classification for the life of the individual or automatically downgraded at the expiration of 50 years. (Note: This would replace exemption 4 and would provide to foreigners some of the benefits intended by the Privacy Act.)

NSC Directive

Section I, B

Requires that the identity of the classifier of the source document be carried forward through subsequent generations of the document by users of the source document. This is neither done nor doable and should be deleted. That is, delete "together with the identity of the classifier."

Section II, E

It should be noted that it is not very often very practicable to modify the original addressees of a document about its subsequently being downgraded but the words in that order are not objectionable. However, there should be a requirement in this paragraph that the downgrader must keep a record of things downgraded and that the downgrader must, at minimum, inform the originating unit and the unit of record (if different from the originating unit) of the fact of the downgrading.



25X1

Director, Central Reference Service

24 September 1975

EXISTING AND PROPOSED CRIMINAL STATUTES
PROTECTING SENSITIVE INFORMATION

I. Title 18

A. 5 USC 793

(1) Section (a) prohibits obtaining information with respect to national defense with the intent or belief that the information is to be used to the injury of the U.S. or to the advantage of any foreign nation.

(2) Section (b) prohibits copying, making or obtaining any sketch, photo, etc. with same intent.

(3) Section (d) prohibits delivery of defense information to an unauthorized individual by someone in lawful possession, access, or control, if the possessor has reason to believe the information could be used to the injury of the U.S. or to the advantage of any foreign nation.

(4) Section (e) prohibits delivery of defense information by an individual in unauthorized possession, with the same knowledge and intent as noted in para (3).

B. 5 USC 794

(1) Section (a) prohibits a person from delivering or transmitting information relating to national defense, with the intent or reason to believe that it is to be used to the injury of the U.S. or to the advantage of a foreign government.

(2) Section (b) relates to the communication of defense information during a time of war.

II. S. 1 (proposed revision of Federal Criminal Code)

A. Section 1121 - Espionage

(1) prohibits entering a restricted area to collect information knowing that it may be communicated to a foreign power

(2) prohibits obtaining such information with same knowledge

(3) prohibits communicating defense information to foreign power, if the person knows that the national defense information may be used to prejudice the safety or interest of the U.S. or to the advantage of a foreign power.

B. Section 1122 - Disclosing National Defense Information

prohibits the communication of national defense information to an unauthorized individual by a person knowing that the national defense information could be used to the prejudice of the safety or interest of the U.S. or to the advantage of a foreign power.

C. Section 1123 - Mishandling National Defense Information

punishes mishandling of national defense information by individuals in authorized and unauthorized possession of such information. Included is conduct which causes loss, destruction, or theft or its communication to a person not authorized.

D. National Defense Information is defined in Section 1128(f) as

'national defense information' includes information, other than information that has previously been made available to the public pursuant to authority of Congress or by the lawful act of a public servant, that relates to:

- (1) military capability of the United States or of an associate nation;
- (2) military planning or operations of the United States;
- (3) military communications of the United States;
- (4) military installations of the United States;
- (5) military weaponry, weapons development, or weapons research of the United States;
- (6) intelligence operations, activities, plans, estimates, analyses, sources, or methods, of the United States; *
- (7) intelligence with regard to a foreign power; *
- (8) communications intelligence information or cryptographic information;
- (9) restricted data as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014); or
- (10) in time of war, any other matter involving the security of the United States that might be useful to the enemy.

*emphasis added

E. Section 1124 - Disclosing Classified Information

punishes disclosure of classified information to an unauthorized person by an individual in authorized possession or control of such classified information. Establishes specific defenses and bars to prosecution.

F. Classified Information is defined in Section 1128(b) as

'classified information' means any information, regardless of its origin, that is marked or designated pursuant to the provisions of a statute or an executive order, or a regulation or rule issued pursuant thereto, as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security;

G. Senator Moss has introduced an amendment (Senate Amendment #863) to delete section 1128f and change "national defense information" in sections 1121, 1122 and 1123 to "classified information."

III. Sources and Methods Legislation

Prohibits the disclosure of information relating to sources and methods to an unauthorized person by an individual in authorized possession of such information. Additional language provides for defenses and bars to prosecution.

This proposal closely tracks section 1124 of S. 1. The major difference is that section 1124 is restricted to classified information.

*National Archives and Records Service
Washington, DC 20408*



September 18, 1975

Honorable William E. Colby
Director, Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

Secretary Kissinger sent me a copy of his August 19 memorandum concerning the proposed review of security classification matters to be conducted by an ad hoc group to which you have been appointed. I have taken the opportunity of suggesting certain changes in Executive Order 11652 in a letter to Secretary Kissinger.

In view of the short time period given the ad hoc group to make its recommendations, I am enclosing a copy of that letter in order to facilitate the ad hoc group's consideration of these recommendations. As I indicated in my letter, there are other more technical revisions which I believe ought to be considered, and I will be happy to provide them to the ad hoc group.

Sincerely,

JAMES B. RHOADS
Archivist of the United States
and Acting Chairman,
Interagency Classification Review Committee

Enclosure

UNITED STATES OF AMERICA

~~GENERAL SERVICES ADMINISTRATION~~
Approved For Release 2005/07/28 : CIA-RDP91M00696R000300040007-3
National Archives and Records Service
Washington, DC 20408



September 17, 1975

Honorable Henry A. Kissinger
Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

Thank you for sending me the copy of your August 19 memorandum relating to a proposed review of security classification matters. It has now been nearly three and one-half years since the new security classification system established by Executive Order 11652 went into effect. Consequently, I agree that a review is certainly in order.

The system created by Executive Order 11652 marked a significant improvement over the system it replaced.

The establishment of a 30-year automatic declassification deadline ended indefinite classification and has spurred the declassification of millions of documents which had ceased to have any national security implication: the National Archives and Records Service has now declassified 155 million pages of World War II material and is about to move into the post-war era.

In addition the Executive order has inhibited an increase in the backlog of classified material through the General Declassification Schedule, under which most documents classified since 1972 should be opened after ten years.

Through the mandatory declassification review provision, the Executive order also included an effective method to declassify documents over ten but not yet thirty years old.

In addition, by granting authority to the Archivist of the United States to declassify (after appropriate consultation), material in his custody originated by the White House, or by Presidential

Commissions, committees, and boards, the Executive order ended the political dilemma and risk which each administration had faced in dealing with documents classified by its predecessors.

For the first time a means had been devised to protect an incumbent President from the criticism of either opening or closing his predecessor's papers for partisan political reasons, while at the same time providing for the declassification of the papers of previous administrations by a government official who was not subject to charges of making decisions based on partisan political considerations. This system has worked well, particularly in the older Presidential Libraries where the declassification of White House material has opened new avenues of historical research and has proved a boon to scholars.

Finally, and most importantly, the Executive order created the Interagency Classification Review Committee (ICRC) which for the first time provided a central means to monitor the government-wide classification and declassification program. From my personal experience with the members of the Committee, I can say without reservation that they are persons of high caliber who are expert and sound in the decisions they have made concerning the government's classification system. I do not need to repeat the list of the ICRC's accomplishments described in the Committee's annual report, a copy of which you received in May. However, I do draw your attention to the fact that the significant progress made by the ICRC has received favorable notice from Congress, the press, and various government agencies.

Although we have come a long way since 1972, my experience, both as Archivist of the United States and as Acting Chairman of the ICRC, indicates the need for further improvements in the system. Needless to say, I do not purport to speak for the other members of the ICRC.

I think that efforts to make the system work even more effectively are especially important in view of growing public and media demands for government information, and most particularly in view of Congressional attitudes reflected in the 1974 amendments to the Freedom of Information Act and the numerous bills proposing to change the classification system introduced in recent sessions. Any revision of the national security classification system must have as its objective a continuing balance between the needs for

protecting sensitive information relating to military and foreign affairs, the disclosure of which would jeopardize our national interests, and the ever growing need to be responsive to the demands of the American people to be fully informed about their national life. It is especially important for the review committee to take into account this public need because a failure to do so would very likely stimulate a Congressional response and a different kind of solution from what we in the Executive Branch have endeavored to carry out.

Specifically, I believe that it is desirable and realistic for the government to move toward reducing the 30 year automatic declassification time schedule to a 20 year period. This can perhaps be accomplished by stages over the next few years. The 20 year declassification goal is not unreasonable for most classified documents. Our experience thus far suggests that about 90 percent of the 20 year old records can be readily declassified.

Specific recognition should also be given to an Advance Declassification Schedule for documents which may be declassified on a date in advance of the time limits established by the General Declassification Schedule. Use of this schedule has developed on an ad hoc basis in some departments. I believe that this schedule should be officially sanctioned and its use encouraged for documents which require short term classification protection. In addition, a significant number of officials believe that the time limits set by the General Declassification Schedule can be shortened, for example, that "Top Secret" material may be declassified after a total of eight years, "Secret" material after six years, and "Confidential" material after four years.

The General Declassification Schedule exemption categories would be more effective if more precise definitions and classification guidance could be provided to classifiers. For example, exemption category one of the Order relating to protection of foreign classified documents would be more rationally applied if the State Department or other Department responsible for that type of information were charged with the responsibility of determining whether the "understanding" between the foreign government or international organization and the United States remains in effect. Under the current system hundreds of thousands of foreign classified documents are being automatically exempted from declassification though they contain no information of a sensitive nature today.

Exemption category two should be changed to clarify that under the Executive order the only statute recognized as exempting material from the provisions of the order is the Atomic Energy Act. It should also place upon the National Security Agency and the Central Intelligence Agency, respectively, a requirement to define the meanings of the otherwise vague and general terms "cryptography" and "intelligence sources and methods." Such descriptions could be issued by the ICRC in the form of a general classification guidance for classifying officers in all agencies. This would promote greater consistency throughout the government of application of this exemption category. Exemption category three needs similar clarification.

Additionally, consideration should be given to automatic downgrading of exempted material prior to the automatic declassification review at 30 years (or at 20 years should the automatic declassification date be lowered as we have suggested). This would result in a considerable cost savings to the government and give the classification system greater credibility.

Section 11 of the Executive order should be expanded to give the Archivist authority to review and declassify White House material originated by previous administrations no matter where it may be located. Currently the incumbent President and his staff have been removed from direct consideration of releasing material classified by a former President and his staff only if that material is located in a Presidential Library or other archival depository under the Archivist's control. By expanding the Archivist's authority to deal with all classified White House material of previous administrations, the current administration can be further protected from charges of making declassification decisions for political reasons.

Above all, it is essential that any review of the classification system consider means of strengthening the role of the ICRC. The Committee has made considerable progress, but it could do more and needs to do more to enhance the integrity of the government's classification system. The ICRC should be independent of any other part of the federal establishment and should report directly to the President. Policy directives relating to the classification system which are binding on all Departments should be issued by the President through the ICRC. This is a necessary requirement to strengthen the role of the ICRC in implementing the Executive order in all its parts. The ICRC, representing as it does all of the major agencies

coping with classification and declassification matters, is in the best position to weight conflicting positions and to instruct agencies concerning current security requirements.

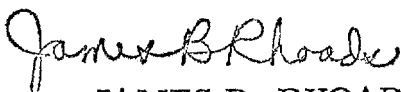
Another step that must be taken to enhance the prestige of the ICRC is to appoint a permanent chairman. Since my appointment as acting chairman in April 1973, I have repeatedly recommended that a permanent chairman of recognized stature from outside the federal government be selected to fill this position. In the past I have submitted several names of persons who could admirably direct the ICRC's activities. I would be happy to again submit names of possible candidates. I feel that appointing a permanent chairman would provide direct public evidence of the importance the President attaches to the work of the ICRC.

I have attempted to highlight those areas which I feel need priority consideration. There are, of course, many other areas which deserve the committee's attention during its consideration of ways to improve the classification system. We would be happy to provide the committee with these other suggested changes.

I also recommend that the committee solicit the views of John S. D. Eisenhower concerning revision of the Executive order. Because of his experience as a military officer, as an assistant to President Eisenhower, as first Chairman of the ICRC, and in view of his intimate knowledge of Presidential papers through his close association with the Eisenhower Library, Ambassador Eisenhower is in a unique position to give sound, knowledgeable advice on this matter. Ambassador Eisenhower suggested certain changes in the classification system at the time Executive Order 10501 was under review and was partially responsible for the inclusion of Section 11 in Executive Order 11652. I feel sure that he would be happy to provide the committee with his views.

In order to expedite the committee's consideration of these proposals, I have taken the liberty of forwarding copies of this letter to General Scowcroft and the other members of the ad hoc group.

Sincerely,



JAMES B. RHOADS
Archivist of the United States, and
Acting Chairman, ICRC